

405 KAR 30:020. General provisions.

RELATES TO: KRS 151.250, 350.600

STATUTORY AUTHORITY: KRS 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 requires the Environmental and Public Protection Cabinet to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth general provisions which apply in this chapter with regard to applicability, conflicting provisions, severability, obligations of permittees, technology assessment, reporting requirements, and hearings.

Section 1. Applicability. The administrative regulations in 405 KAR Chapter 30 shall apply to any oil shale operation conducted on or after the effective date of these administrative regulations on land containing oil shale deposits and any other lands used, disturbed, or redisturbed in connection with or to facilitate such operations or to comply with the requirements of KRS Chapter 350 and the requirements of this chapter except:

(1) The extraction of oil shale by a land owner for his own noncommercial use on land owned or leased by him; and

(2) The extraction of oil shale as an incidental part of government-financed construction. Provided, however, that any person extracting oil shale incidental to government financed construction shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

Section 2. Conflicting Provisions. The provisions of 405 KAR Chapter 30 are to be construed as being compatible with and complementary to each other. In the event that provisions within this chapter are found to be contradictory, the more stringent provisions shall apply.

Section 3. Severability. In the event that any provision or administrative regulation in 405 KAR Chapter 30 is found to be invalid, the remaining provisions of this chapter shall not be affected nor diminished thereby.

Section 4. Obligations of Persons Engaged in Oil Shale Operations. (1) General obligations:

(a) No person shall engage in an oil shale operation or related activity without having obtained from the cabinet a valid permit covering the area of land to be affected.

(b) A person engaged in any oil shale operation shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, shale, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to 405 KAR Chapter 30, or place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of the area of land which is under permit and for which bond has been posted pursuant to this chapter.

(c) A person engaged in an oil shale operation shall not engage in any activities which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the pub-

lic.

(d) A person engaged in an oil shale operation shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(e) Upon development of any emergency conditions which threaten the life, health, or property of the public, a person engaged in an oil shale operation shall immediately notify the person or persons whose life, health, or property are so threatened, shall take any and all reasonable actions to eliminate the condition creating the emergency, and shall immediately provide notice of the emergency conditions to the cabinet, to local law enforcement officials, and to local government officials. Any emergency action taken by a person engaged in an oil shale operation pursuant to this paragraph shall not relieve that person of other obligations under this chapter or of obligations under other applicable local, state, or federal laws and regulations.

(f) Compliance with the requirements of this chapter does not relieve any person engaged in an oil shale operation from compliance with other applicable administrative regulations of the cabinet.

(2) Sedimentation structures.

(a) The responsible design engineer shall determine the structure hazard classification of all sedimentation structures whether new or proposed reconstructed structures according to the classification descriptions in paragraph (b). For structures classified (B) - moderate hazard or (C) - high hazard, the person engaged in an oil shale operation shall obtain a permit from the cabinet, Division of Water, pursuant to KRS 151.250, and administrative regulations adopted pursuant thereto, prior to construction or reconstruction.

(b) Structure hazard classifications are as follows:

1. The following broad classes of structures are established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

a. Class (A); low hazard: structures located such that failure would cause loss of the structure itself but little or no additional damage to other property. Such structures will generally be located in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.

b. Class (B); moderate hazard: structures located such that failure may cause significant damage to property and project operation, but loss of human life is not envisioned. Such structures will generally be located in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruption of use or service of relatively important public utilities.

c. Class (C); high hazard: structures located such that failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads. This classification must be used if failure would cause probable loss of human life.

2. The responsible engineer shall determine the classification of the structure after considering the characteristics at the valley below the site and probable future development. Establishment of minimum criteria does not preclude provisions for greater safety when deemed necessary in the judgment of the engineer. Considerations other than those mentioned in the above classifications may require that the established minimum criteria may be exceeded as determined by the cabinet. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the drawings.

3. When structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure must be considered in assigning the structure classification of the upstream structure.

Section 5. Reports. A person engaged in an oil shale operation shall submit such data, reports, documentation, certifications, or other information as the cabinet may require, or as may be required

by KRS Chapter 350 and administrative regulations adopted pursuant thereto. The cabinet may impose any monitoring or data collection requirements upon the permittee as are deemed necessary for the cabinet to adequately assess the possible adverse environmental impacts of such activities. Such information shall be submitted at intervals and in a format specified by the cabinet.

Section 6. Extraction and Processing Operations. (1) Any person engaged in an oil shale operation shall demonstrate to the cabinet utilizing necessary technical, scientific, and engineering data the impacts their operation will have on the environment. Such data used in the justification shall have been generated on eastern shales having comparable characteristics to the shales in the location of the proposed project area.

(2) In the event the applicant cannot demonstrate to the cabinet's satisfaction the extent and magnitude of possible adverse environmental impacts of the facility and reasonable control of these impacts, its size shall be limited to a total surface disturbance of 100 acres per year. Total surface disturbance shall include, but not be limited to, areas upon which mining activities occur or where such activities disturb the natural land surface, lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site and for haulage, lands accommodating conveyor systems, and excavations, workings, impoundments, dams, ventilation shafts, entry ways, spent shale banks, spent shale disposal sites, dumps, stockpiles, overburden piles, spoil piles, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

Section 7. Nothing in this chapter shall be construed to relieve the permittee of any responsibility for any of the obligations of 405 KAR Chapter 30.

Section 8. Hearings. (1) The provisions of KRS 224.081 shall apply to any cabinet order or determination made pursuant to 405 KAR Chapter 30.

(2) Hearings shall be conducted pursuant to KRS 224.083 and appeals may be taken from any final order of the cabinet as allowed by KRS 224.085. (8 Ky.R. 91; 465; eff. 3-1-1982; 9 Ky.R. 945; eff. 11-2-1983; TAm eff. 8-9-2007; Crt eff. 7-3-2018.)